Filed 4/6/09 In re V.P. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re V.P., a Person Coming Under the Juvenile Court Law.	B206864 (Los Angeles County Super. Ct. No. PJ39703)
THE PEOPLE, Plaintiff and Respondent, v. V.P., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Jack J. Gold, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael C. Keller and Beverly K. Falk, Deputy Attorneys General, for Plaintiff and Respondent.

The minor V.P. appeals from an order of wardship after the juvenile court found she had committed assault by means of force likely to produce great bodily injury. The minor contends the evidence is insufficient to support the finding, and she was denied the right to present a defense. We affirm the order as modified.[1]

FACTUAL AND PROCEDURAL BACKGROUND

1. *Juvenile Court Proceedings*

A Welfare and Institutions Code section 602[2] petition was filed (first petition) alleging the minor, then 14 years old, had committed attempted robbery. Before the jurisdiction hearing commenced on the first petition, another section 602 petition was filed (second petition) alleging the minor had committed assault by means likely to produce great bodily injury. The minor admitted committing attempted robbery as alleged in the first petition. Following a jurisdiction hearing on the second petition, the juvenile court sustained the aggravated assault allegation.

The disposition hearings on the two petitions were to be combined, but the juvenile court subsequently agreed to the minor's request to continue the hearing on the second petition to present a new trial motion. With respect to the first petition, the court declared the minor a ward of the court, determined the attempted robbery was a felony, ordered the minor home on probation, and calculated the maximum period of physical confinement as three years.

---

[1] The minor's additional challenge to the juvenile court's order setting a maximum period of physical confinement is well taken. Because she was placed home on probation, the court's calculation of that maximum term is of no legal effect. (See *In re Ali A.* (2006) 139 Cal.App.4th 569, 572-574 [when minor placed home on probation, juvenile court is not required to include maximum term of confinement in disposition order; maximum term of confinement contained in such an order is of no legal effect]; *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1744 ["[o]nly when a court orders a minor removed from the physical custody of his parent or guardian is the court required to specify the maximum term the minor can be held in physical confinement"].) Accordingly, we strike that portion of the juvenile court's order.

[2] Statutory references are to the Welfare and Institutions Code.

At the disposition hearing on the second petition, the juvenile court ordered the minor to remain a ward of the court, with the prior order for her to be placed home on probation to remain in full force and effect, determined the aggravated assault was a felony, and added one year to the previously-ordered three-year maximum period of confinement.[3]

2. *The Jurisdiction Hearing on the Second Petition*

a. Summary of the People's evidence

On the afternoon of December 12, 2006, the teenage victim, C.P, was attacked by four teenage girls outside a public library. They punched C.P. in the face until she fell to the ground and then kicked her upper body before fleeing. C.P. suffered pain, redness and bruising on her face and bleeding from her nose and mouth.

The issue at the jurisdiction hearing was whether the minor was one of the attackers. C.P. testified she could not initially see the minor behind a pillar, but she turned and saw the minor's face after the minor had punched her. According to C.P., who was now in high school, she had known the minor since their attendance at middle school together, but she did not know the other three girls, learning their names only after the attack.

In her initial police interview, C.P. did not identify the minor as one of her attackers; instead she described the four girls to the officers. Apart from their individual height and weight, C.P. said two of the girls had blond hair, one girl had brown hair, and one girl had black and brown hair. In a later interview with Los Angeles Police Officer Angelica Kegeyan, C.P. named all four of her attackers. When Kegeyan asked C.P. to identify her attackers from photographs in a school yearbook, C.P. found a photograph of confederate D.E.,[4] whom she said was one of her attackers. Two days later, C.P.

---

[3] It is not clear from the record whether the new trial motion was either filed or adjudicated at the disposition hearing on the second petition.

[4] There was a combined jurisdiction hearing for the minor and confederate D.E., after which the court found not true the allegation of aggravated assault as to confederate D.E.

identified the minor and confederate D.E. as two of her attackers during a field show up arranged by Officer Kegeyan. In court, C.P. again identified the minor as one of her attackers.

During her testimony, C.P. acknowledged she had not volunteered the minor's name when first interviewed by police, although she knew the minor as one of her attackers. C.P. explained she "was distraught" at the time and believed officers could find the girls from the descriptions she provided. C.P. was "not sure" if any of her attackers "had purple hair," but she knew the minor "at one point had purple hair."

b. Summary of the Defense Evidence

The minor's defense was mistaken identity. The minor testified she was not at the library on December 12, 2006 and did not assault C.P. Instead, the minor was with a friend in the afternoon and with her family at night. On the day of the attack on C.P., the minor's hair was burgundy. It was the minor's testimony she often changed the color of her hair, but only to either blond or burgundy.

B.C. testified that she, her boyfriend, A.B., and confederate D.E. were outside the library when C.P. was assaulted by several girls. Neither confederate D.E. nor the minor was involved in the attack; the minor was not at the library that day. A.B. also testified and corroborated the testimony of his girlfriend, B.C. Specifically, A.B. testified the minor was not among the girls who attacked C.P.; she was not at the library. Confederate D.E. testified and denied knowing C.P. or attacking her at the library. She also testified the minor was not present that day.

The parties stipulated that on January 26, 2007, the day of her arrest, the minor's hair was red. The record reflects at the jurisdiction hearing, the minor's hair was blond.

DISCUSSION

1. *Sufficiency of Evidence*

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605; *In re Michael M.* (2001) 86 Cal.App.4th 718, 726.) In either case we review the whole record

in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053; *People v. Bolin* (1998) 18 Cal.4th 297, 331.) Additionally, in deciding the sufficiency of the evidence, an appellate court does not reweigh evidence or resolve credibility issues, which are "the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181; see also *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Furthermore, "unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young*, *supra*, 34 Cal.4th at p. 1181.) Only if a witness's testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions, will an appellate court reject the statements given by a witness who has been believed by a trial court. (*People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on another ground in *People v. Flannel* (1979) 25 Cal.3d 668.)

The minor contends there was insufficient evidence of her involvement in the attack on C.P., arguing the juvenile court erred "in giving any weight" to C.P.'s "inherently unreliable and contradicted testimony" and "disregarding the testimony of the three witnesses who stated [the minor] was not present, as well as disregarding the unimpeached testimony of [the minor] herself."

The minor's contention amounts to no more than a request that we reweigh the evidence and substitute our judgment for that of the trier of fact, which is not the function of a reviewing court. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138-1139, *People v. Culver* (1973) 10 Cal.3d 542, 548.) There was conflicting evidence as to whether the minor was one of the attackers. C.P.'s testimony identifying the minor was neither physically impossible nor inherently improbable. C.P had known the minor since they had been middle school students and recognized her after seeing her face during the attack. C.P. gave the minor's name to Officer Kegeyan, and consistently identified her in the field show up and in court. C.P.'s failure to provide the minor's name to police immediately after the attack was understandable in light of her physical and mental

condition at the time. The evidence was sufficient to convince a rational trier of fact, beyond a reasonable doubt, of the minor's involvement in the attack on C.P.

2. *Right to Present a Defense*

The minor asserts she was deprived of the right to present a defense by the juvenile court's refusal to allow her mother to testify the minor's hair was burgundy and not blond on the day C.P. was attacked. The minor's claim on appeal, as it was before the juvenile court, is specious in that it rests on a mischaracterization of the record.[5] The court never ruled to exclude the mother's testimony. On the contrary, the minor's counsel was expressly advised the mother could testify, but only after the minor had testified. At the conclusion of the minor's testimony, however, her counsel never called

---

[5] At the jurisdiction hearing, before the minor testified, her counsel told the court she wanted the minor's mother to testify first about the color of the minor's hair on the day of the attack. After some discussion about the anticipated length of the minor's and the mother's testimony, the juvenile court stated the mother could testify but only after the minor had testified. The minor's counsel did not object.

When the minor concluded her testimony, her counsel indicated she had an additional question to ask Officer Kegeyan, whom the court then ordered back for the following day before recessing the hearing.

The next morning, the minor's counsel informed the court, "We have all rested I think," and obtained from the prosecutor the stipulation the minor had red hair at the time of her arrest. The minor's counsel then announced, "We all rest. Well, I rest."

The prosecutor rested after Officer Kegeyan testified as the sole rebuttal witness. Both defense counsel told the court they had no surrebuttal evidence.

Following argument by counsel, the court dismissed the petition as to confederate D.E., but sustained the petition as to the minor. The minor's counsel confirmed the court's finding as to the minor and then commented, "I would like to indicate, at the time I called the minor, I first attempted to call the mother to testify to the hair, and I was told I could not call the mother; that I was to call the minor." The court asked, "What does that have to do with the stipulation as to the mother?" Counsel replied, "That was a month later. I wanted the mother to testify as to that date." The court repeated its finding the minor had committed aggravated assault and suggested her counsel could raise the issue on appeal.

the mother to testify, notwithstanding the opportunity to do so. Instead, counsel informed the court there would be no additional defense witnesses or any surrebuttal witnesses.

DISPOSITION

The maximum term of confinement is stricken. As modified, the juvenile court's order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WOODS, J.

We concur:

PERLUSS, P. J. **ZELON, J.**